



Report on Mongolia - Twenty Second Round of the Universal Periodic Review (2015)

This report is submitted by the LGBT Centre of Mongolia, NGO established in 2007 and officially registered in 2009. This report deals with the sexuality minority's human rights in Mongolia and makes references specifically to the situation facing lesbian, gay, bisexual and transgender (LGBT). The report was compiled on the basis of the Centre's systematic documentation of various violations against LGBT people, including social perceptions of sexuality, violence and discrimination against LGBT people, and the lack of institutional protection or redress mechanisms.

Summary:

This report documents the widespread societal and institutional discrimination against, and intolerance of, sexuality minorities, herein meaning lesbian, gay, bisexual and transgender (LGBT) persons in Mongolia. Discrimination against LGBT persons is endemic in the public, private and non-governmental sectors and encompasses all spheres of the society, especially the public goods and service providers such as the law enforcement, healthcare, and education. Despite Mongolia's stated commitment to the upholding of human rights, despite the various recommendations from peer states under the Universal Periodic Review and the treaty bodies (CAT in 2010, CCPR in 2011), intolerance of LGBT persons is manifested in varying forms, from denial of access to public spaces, to denial of access to justice and fair trial in the event of physical and/or sexual violence. These human rights violations are addressed thematically in this report.

LEGAL AND INSTITUTIONAL FRAMEWORK

Mongolia has joined a range of major international human rights treaties, such as the Convention of the Elimination of All Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the ILO Discrimination (Employment and Occupation) Convention, and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, and Convention against Discrimination in Education. Moreover, Article 10 of the Constitution of Mongolia, paragraph 1 states: "Mongolia shall adhere to universally recognised norms and principles of international law and pursue a peaceful foreign policy"; paragraph 2 of the same article states: "Mongolia shall fulfil in good faith its obligations under international treaties to which it is a party"; and paragraph 3 of the same article confirms: "The international treaties to which Mongolia is a party shall become effective as national legislation upon the entry into force of the laws or on their ratification or accession".

DISCRIMINATION

In education: The culturally pervasive notion of heteronormativity is implicit in the state education system, which serves to reinforce ignorance about social diversity, and specifically about LGBT persons, and implicitly promotes stereotypically heteronormative perceptions of sexuality and reflects a lack of understanding of LGBT people's fundamental human rights. With the exception of the Sexual and Reproductive Health secondary school textbook, in which the lives of three gay people are outlined, the secondary-school education

curriculum does not carry comprehensive information regarding sexuality and sexual orientation.

Same-sex couples and their children: The prejudice against LGBT persons severely impacts on their ability to live wherever they choose, and to live together in relationship with their partners. Testimonies and case studies documentation among LGBT people depict that LGBT persons are discriminated against in the housing sector and are denied housing or evicted if it is suspected they are cohabiting with their same-sex partners. If LGBT persons choose to cohabit, they do so under the pretext of being friends, relatives or co-workers. Mongolia continues to frame its human rights discourse in a heteronormative and narrow manner, a prime example of which is the official Mongolian-language translation of the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages to which Mongolia acceded in April 1991, in which preamble 2, “Marriage shall be entered into only with the free will and consent of intending spouses”, is mistranslated as “Marriage shall be entered into only with the free will and consent of a man and a woman”, thus illustrating the state’s deeply heteronormative notion of marriage. By not fulfilling its international obligation to recognise and legitimise same-sex marriages, and by reinforcing a heteronormative family framework, the Government of Mongolia is acting in a discriminatory manner towards same-sex family units, and in so doing is denying the right of same-sex couples to be recognised as a “natural and fundamental group unit of society” entitled to the “the widest possible protection and assistance ... particularly for its establishment” as stipulated in Article 10 (1) of the International Covenant on Economic, Social and Cultural Rights, which means that children born in such same-sex families are less protected than by the children born in heterosexual marriages.

Law enforcement: Testimonies gathered from the Mongolian LGBT community suggest widespread and pervasive harassment of LGBT persons by the members of the law enforcement. This includes covert surveillance of known LGBT persons, keeping files on known LGBT persons, monitoring of LGBT social events, photographing/filming those in attendance, phone-tapping, arbitrary detentions, intimidation, threats, physical and sexual assaults either by law enforcement or by other inmates on LGBT persons while in custody.

Hate crimes and violence against LGBT persons: Evidence gathered from the Mongolian LGBT community suggests that all forms of violence against LGBT people are commonplace when their sexuality and/or gender identity becomes known or is suspected. The Government of Mongolia has consistently failed to protect or provide protection mechanisms for those at risk, which constitutes discriminatory treatment and a violation of the state’s obligation to ensure that everyone, without exclusion, are afforded equal protection from gender-based violence. Familial violence – physical and psychological (threats, taunts, ostracism) – is the most common form of violence facing LGBT persons in Mongolia, and generally occurs when a person’s sexuality and/or gender identity has become known or is suspected.

Lack of access to needs-based, culturally competent healthcare: Evidence gathered from the Mongolian LGBT community suggests there is a lack of understanding of sexualities minorities among healthcare providers and a lack of understanding of the attendant physical and psychological problems the LGBT community face as a result of sexuality-related trauma. Many LGBT persons feared that the disclosure of their sexuality to health-service providers would lead to ridicule, outright dismissal, a denial of services or further reporting of their sexuality to other government authorities. There are testimonies among the LGBT community members that sexual orientation and gender identity/expression are

always misunderstood as a psychiatric disorder or addiction, and that community members were treated as psychiatric patients. Evidence indicates a high suicide rate among the LGBT community, particularly among LGBT youth, that is generally related to ostracism on the basis of their sexual orientation and/or gender identity. The problem is compounded by a lack of counselling services for LGBT persons, meaning there is no psychological support for at-risk community members. The lack of understanding of the realities of life for the LGBT community, the heteronormative framework of the health sector and the lack of information within the sector itself in relation to the physical and psychological wellbeing of LGBT persons results in LGBT persons being denied access to complete medical care.

CASES DOCUMENTED BY THE LGBT CENTRE (2011-2014)

- I. N. O., an openly living transman, was physically attacked by the mother of his girlfriend, B. Ts., with a knife at around 9:30pm on 18 May 2011 at his girlfriend's home. In July 2010, B. Ts. found out about the relationship between her daughter and N. O. and categorically forbade them to meet. During the attack, B.Ts. maintained that N. O. was an abomination and that he had corrupted their daughter. The case was registered at the Bayanzurkh district police, however, at the bequest of his girlfriend N. O. withdrew the complaint despite the fact that the girlfriend's parents continued to threaten him on a daily basis and forbade their daughter to meet him.
- II. S. Ch., a transwoman, and E. B., a gay male, were attacked on 31 May 2011 morning at 5am while asleep in the Cosmos Hotel room. The attackers had observed the couple at the hotel bar and followed them, breaking down the door to their room and punching both the victims on their heads to the point of breaking E.B.'s nose, multiple cuts and a concussion on S. Ch. Although the victims reported the case to the Bayanzurkh district police, their case was not tried because the police failed to identify and find the perpetrators.
- III. N. A., an openly living transman, was attacked at the pub he ran at 11:40pm on 25 February 2012 by E. G., a former boyfriend of his sister who knew N. A. before his transition. E. G. had punched N. A. in the face saying "So they say you are handsome guy, are you? Since when are you a man?", inflicting a concussion and a fractured orbital bone. He filed the complaint with Ulaanbaatar city Chingeltei district police. The case was first instance adjudicated on 4 September 2012 by the Chingeltei District Criminal Court, where E. G. being found guilty, but was not given a sentence due to the Prosecutor's Office losing the medical conclusion on the seriousness of the suffered injuries by the victims as well as due to the time that had elapsed since the first instance report filing to adjudication (first time criminal offenders are not given a sentence if more than six months had passed since the incident that results in minor, not serious injuries).
- IV. A. O., an open gay man, was found dead sometime in early March in the territory of 1st khoroo of Bayangol district, Ulaanbaatar. A. O. had filed a complaint of being raped in December 2013 on the territory of Sukhbaatar district, Ulaanbaatar. A. O. later withdrew the complaint, however, he filed another similar complaint of being raped in late January 2014. He was verbally derided by the Sukhbaatar district Prosecutor's Office personnel ("How can you be raped if you are a man yourself?", "Why should you work in a sauna? Because you work in a sauna, you were raped.") The police didn't release any details of his death to the LGBT Centre, and has closed the case as a suicide despite the indications that this may have been a murder.
- V. E. S, and E. M. openly living transwomen, were picked up by the Chingeltei police patrol car at around 11:10pm on 27 March 2014 from the vicinity of the Golomt bank branch number 1, taken into custody and charged with the prostitution. On the morning of 28 March 2014, the two women were making statements when a

television station crew was ushered in by a police colonel Jenisguli, and the women were filmed by the television cameras as prostitutes. Although the detained women were not yet adjudicated, they were automatically labelled as prostitutes, and were filmed by TV8 television crew at the behest of a police personnel. Although the footage was not shown, the transwomen were followed by this television crew upon their release and were filmed and broadcast, endangering their lives and well-being.

- VI. U. and S. are a lesbian couple living together. The older brother of S. had denied S. her share of the inherited from parents' property, saying that if she were to start living "normally", he would immediately buy her an apartment and a car.
- VII. A. Z., an openly living gay man and owner of the only LGBT club in Mongolia, was attacked at his business around 3am on 1 June 2014 by 5 customers who refused to leave the club after the closing time and who attacked the owner when asked to leave. They had broken A. Z.'s nose and given him a concussion. When A. Z. went to the Chingeltei district police immediately following the incident to register his complaint, the police officers on duty refused to register his complaint, maintaining alcohol intoxication as a reason to not register the case. Two days later, the first instance report was filed. The case is at the investigation and prosecution stage at present.
- VIII. From August 2014, the LGBT Centre approached a number of state-budget funded cultural spaces and organisations in Ulaanbaatar city to utilise their space and organise public cultural events such as a visual art works exhibition and a film festival to promote the non-discrimination and equality for all through the Equality and Pride Days' framework. Despite the Government and Parliamentary resolutions that are geared toward implementing the human rights of LGBT persons, the Centre was denied access directly and indirectly.

UPR RECOMMENDATIONS FROM THE 1ST CYCLE

UPR recommendations for Mongolia in relation to LGBT people received during the first cycle were 84.17., 84.56., 84.57., 84.58., 84.96., 84.99., and 86.8.

IMPLEMENTATION OF THE ABOVE RECOMMENDATIONS:

- 1 No broad-based anti-discrimination legislation is initiated at any stage.
- 2 The Government resolution number 159 of 18 May 2011 (on the implementation of UPR recommendations), the Parliamentary resolution number 13 of 3 July 2013 (on the implementation of the 12th periodic report on the state of human rights in Mongolia by the National Human Rights Commission of Mongolia) oblige the state to start implementing the recommendations in relation to ensuring the enjoyment of fundamental human rights by LGBT people in Mongolia.
- 3 Only the Ministry of Culture, Sports and Tourism passed a non-discrimination resolution in 2013 in pursuit of the above resolutions to be upheld in all spaces where the Ministry has a purview.
- 4 The criminal justice reform undertaken by the present Government includes a reformulation of the Criminal Code that includes in its draft the definition of a hate crime. The bill is presently tabled with the Parliament.
- 5 Ensuring a fair trial in relation to the victims of hate crimes is presently questionable as the present Criminal Code does not contain any reference to hate crimes that may be committed

RECOMMENDATIONS FOR THE GOVERNMENT OF MONGOLIA FOR THE 2ND CYCLE

1. *Enact an anti-discrimination law that explicitly reflects non-discrimination based on sexual orientation and gender identity/expression to provide effective legal protection for sexuality and*

other minorities in Mongolia, and establishes a mechanism of anti-discrimination law enforcement through specifically assigned and mandated offices in accordance with Article 1 of the Universal Declaration of Human Rights. The broad-based anti-discrimination law must promote a supportive and enabling environment for sexuality minorities, including an obligation on the part of the State to promote human rights for everyone in order to effectively address the underlying societal prejudices and inequalities through media, education and public information on non-discrimination, as well as provision of the necessary physical, technical, funding support to promote LGBT people's human rights.

2. *Enact anti-hate crime law to protect minorities from hate crimes, ensure privacy and confidentiality of information, emphasise education and conciliation, and provide for speedy and effective criminal, administrative and civil remedies.*
 - a. *Provide continued training for the law enforcement and judicial sectors on the prevalence of sexual and gender-based violence against LGBT persons and codify their obligation to uphold non-discriminatory and inclusive practices, including the preservation of dignity and confidentiality, in their dealings with such victims.*
 - b. *Provide social services and support for sexuality minorities who are victims of familial violence, including the provision of state protective shelters for victims, medical care and psychological counselling.*
3. *Introduce a universal non-discrimination policy inclusive of sexual orientation and gender identity/expression at all educational institutions to ensure a safe educational environment for LGBT youth to develop and express themselves without fear of retribution by faculty or peers.*
 - a. *Review curricula for teacher training, social work, psychology and medical professions' in order to mainstream human rights, with particular attention paid to the inclusion of a wide concept of sexuality, paying special attention to sexuality minorities and their social and legal issues so as to promote a supportive and enabling environment in which LGBT youth may study in line with their right to receive education and information.*
4. *Enable the LGBT people to access the needs-based healthcare through:*
 - a. *Ensure healthcare providers are informed about both the physical and psychological issues that pertain to sexuality minorities, that the equality and non-discrimination is prescribed as an ethical standard in healthcare provision.*
 - b. *Ensure sub-communities are able to access the specific healthcare (such as universal healthcare insurance-covered access to IVF by lesbian and bisexual women, universal healthcare insurance-covered access to hormone replacement therapy and transition-related medical procedures by transpersons).*
 - c. *Mandate professionalisation of psychological counselling methods and techniques in line with the international standards and criteria, and to enforce those as opposed to the remnants of socialist curricula wherein non-heteronormative sexual orientations and gender identity/expression are considered a disorder.*
5. *Review the Family Law which in Article 3.1.1 defines marriage as: "Marriage is a man and a woman registering with a competent government authority to found a family based on their free will, consent and equality", and which in Article 3.1.3 defines spouses as: "A husband and a wife related to each other through marriage and who have equal rights and responsibilities", and bring the spirit and language of the law in line with its international obligations to provide the widest possible protection and assistance to all consenting adults to marry and found a family without discrimination based on their sexual orientation.*